

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
TUESDAY, AUGUST 3, 2004**

The Safety and Health Codes Board meeting was called to order at 10:05 a.m.

BOARD MEMBERS PRESENT: Mr. Roger Burkhart
Mr. Louis Cernak
Ms. Juanita Garcia
Mr. James J. Golden
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James H. Mundy
Ms. Milagro Rodriguez
Mr. Linwood Saunders

BOARD MEMBERS ABSENT: Mr. Alvin Keels, Sr.
Mr. Kenneth Rigmaiden
Mr. Chuck Stiff
Dr. Khizar Wasti

STAFF PRESENT: Mr. C. Ray Davenport, Labor and Industry Commissioner
Mr. Glenn Cox, Director of VOSH Programs
Mr. Fred Barton, Boiler Safety Compliance Director
Mr. Ronald Graham, Health Compliance Director
Mr. Jay Withrow, Office of Legal Support Director
Ms. Jennifer Wester, Cooperative Programs Director
Mr. John Crisanti, Office of Planning and Evaluation Manager
Ms. Patti Bell, Policy Analyst
Ms. Regina Cobb, Agency Management Analyst Sr.

OTHERS PRESENT: Mrs. Anne Burkhart

ORDERING OF AGENDA

After calling the meeting to order, as the first order of business, Chairman Saunders asked for a motion from the Board to accept the proposed Agenda. Mr. Lou Cernak made the motion to accept the Agenda as submitted and Dr. James Mundy seconded the motion. The motion was carried by voice vote.

APPROVAL OF MINUTES

Chairman Saunders asked for a motion from the Board to approve the Minutes of April 21, 2004 meeting. Dr. Mundy made the motion to accept the Minutes and Mr. Cernak seconded the motion. The motion was carried by voice vote.

ELECTION OF OFFICERS

Chairman Saunders announced that he enjoyed working with the Board and with staff during his tenure as Chairman during the last year. He then opened the floor to nominations for officers for Chair. Mr. Roger Burkhart nominated Ms. Jolly, who was the sole nominee for Chair. Ms. Jolly was unanimously elected by voice vote. Mr. Saunders then turned the meeting duties over to the new Chair, Ms. Jolly, who then asked for nominations for the Vice-Chair position. Next, Mr. Cernak nominated Ms. Juanita Garcia for the position of Vice Chair. There were no other nominees and Ms. Garcia was unanimously elected. Ms. Jolly then asked Mr. Burkhart to serve as Secretary of the Board and he accepted.

PUBLIC COMMENT

As Chair, Ms. Jolly opened the floor to comments from the public on matters relevant to the Board, however, no members of the public had any comments for the Board.

OLD BUSINESS

16 VAC 25-55, Proposed Regulations Governing Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors

Mr. Fred Barton, Director of Boiler Safety Compliance, addressed the Board and asked them to consider for adoption as a proposed regulation of the Board a draft regulation governing the financial responsibility of boiler and pressure vessel contract fee inspectors and to continue the regulatory adoption process.

Mr. Barton stated that the intent of this financial responsibility requirement was to assure additional protection to the public, including compensation to third parties in cases where there may be bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

He informed the Board that, as outlined in the offered draft, financial responsibility in the form of insurance, guaranty, surety, self-insurance, or some combination thereof, would be required as follows: aggregate limits of \$500,000 for any contract fee inspector with less than 1% market share; \$1 million for those with 1% up to and including 10% market share; and \$2 million for those with more than 10% market share or any contract fee inspector that employs or has a contractual agreement to provide such services with another contract fee inspector or inspectors.

With respect to the impact of this proposed regulatory draft, Mr. Barton stated that contract fee inspectors would be required to provide documentation of their means of indemnification at the time of their certification or before performing inspections and at renewal of the instrument of insurance, guaranty, surety or self-insurance. He continued by stating that any addition costs to the contract fee inspector as a result of the requirements of this regulation would be passed on to the boiler or pressure vessel owner who is the end user of the service.

He noted that impact of the regulation on employers, employees, and the general public was to provide compensation to such third parties up to the level of the required financial responsibility in cases of bodily injury and property damage resulting from, or directly related to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. He stated that no significant impact is anticipated on the Department beyond the cost to promulgate the regulation.

Mr. Barton said that the financial responsibility requirements of the proposed regulation would cost contract fee inspectors approximately \$7,500 - \$10,000 per year which would be passed on to the boiler or pressure vessel owners, the end users of the service. He informed the Board that the financial responsibility requirements would also give contract fee inspectors a vested interest in the quality of the inspections that they conduct.

Periodic Review of Existing Regulations

Mr. John Crisanti, Planning and Evaluation Manager, began by explaining that Governor Warner's Executive Order Number 21 (02), "Development and Review of Regulations Proposed by State Agencies," governs periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

He continued by stating that at the last meeting of the Board on April 21, 2004, the Board was notified that 11 regulations had been identified for periodic review. He informed the Board that all of the regulations promulgated by the Safety and Health Codes Board are included in the periodic review process at least once every four years which includes (i) a review by the Attorney General to ensure statutory authority for regulations, and (ii) a determination by the Governor as to whether the regulations are necessary for the protection of public health, safety and welfare and whether the regulations are clearly written and easily understandable.

Mr. Crisanti noted that the periodic review for each regulation is required to be completed and a report prepared within 90 days after the commencement of the review. He then listed the 10 regulations that were reviewed and recommended for retention with no change. They are:

16 VAC 25-20-10, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees;

16 VAC 25-30-10, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes-Incorporation by Reference, 40 CFR 61.140 through 61.156;

16 VAC 25-35-10, *et seq.*, Regulation Concerning Licensed Lead Contractors Notification, Lead Project Permits, and Permit Fees

16 VAC 25-70-10, *et seq.*, Virginia Confined Space Standard for the Telecommunications Industry;

16 VAC 25-80-10, Access to Employee Exposure and Medical Records;

16 VAC 25-140-10, *et seq.*, Virginia Confined Space Standard for Construction Industry;

16 VAC 25-150-10, Underground Construction, Construction Industry;

16 VAC 25-160-10, *et seq.*, Construction Industry Standard for Sanitation;

16 VAC 25-170-10, *et seq.*, Virginia Excavation Standard, Construction Industry; and

16 VAC 25-180-10, Virginia Field Sanitation Standard, Agriculture Industry.

The following regulation was recommended for retention with a housekeeping amendment change only:

16 VAC 25-40-10, Standard for Boiler and Pressure Vessel Operators Certification.

On behalf of the Department, Mr. Crisanti asked the Board for approval of the ten reports that were recommended for retention without change and for approval of the one report recommended for a housekeeping change.

Mr. Crisanti stated that the comment period for these eleven regulations began with a notice of periodic review published in *The Virginia Register* on May 3, 2004. The notice requested comment on the ten regulations no later than May 25, 2004. The agency did not receive any public comments during this time period. Mr. Crisanti informed the Board that final reports are due to the Secretary of Commerce and Trade and the Department of Planning and Budget no later than August 25, 2004.

Chairperson Jolly asked for a motion from the Board based on the Department's recommendation. Mr. Cernak made the motion that was seconded by Mr. Saunders. The motion was carried by voice vote.

16 VAC 25-155, Amendment to General Requirements for Clearances, Construction of Electric transmission and Distribution Lines and Equipment, Construction Industry, Subpart V, Final Adoption, and Repeal of 16 VAC 25-175-1926.950 (c)(1), General Requirements - Clearances

Mr. Glenn Cox, Director of VOSH Programs requested, on behalf of the VOSH Program, that the Board consider for final adoption 16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry, Subpart V, and the Repeal of 16 VAC 25-175-1926.950 (c)(1), with a proposed effective date of October 15, 2004.

He explained that this regulation will provide Construction Industry electrical transmission and distribution workers with safety protections identical to those already afforded their General Industry counterparts at 16 VAC 25-90-1910.269(1)(2)(i).

With respect to the impact of this regulation, Mr. Cox explained that this regulation would require employers to further assure the safety of their employees during work on power lines. He stated that the regulation would necessitate construction employers to implement protective measures for its electrical transmission workers equivalent to those afforded General Industry transmission workers. He added that construction employees would benefit from increased protection while engaged in work on power lines.

Mr. Cox summarized the public participation efforts and he noted that no comments were received on this regulation during the comment period. On behalf of the Department of Labor and Industry, Mr. Cox recommended that the Board consider for final adoption the Amendment to General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry, 16 VAC 25-155, Subpart V, and repeal of 16 VAC 25-175-1926.950 (c)(1), as authorized by Virginia Code § 40.1-22(5), with an effective date of October 15, 2004.

Chairperson Jolly asked for a motion from the Board based on the Department's recommendation. Mr. Saunders made the motion that was seconded by Mr. Mundy. The motion was carried by voice vote.

NEW BUSINESS

Technical Corrections to Five Standards; Final Rule

On behalf of the Department of Labor and Industry, Mr. Glenn Cox requested that the Safety and Health Codes Board consider for adoption federal OSHA's technical corrections to five standards, as published in the Federal Register (69 FR 31880) on June 8, 2004, with an effective date of October 15, 2004.

Mr. Cox summarized the technical corrections as follows: (1) Mechanical Power-Transmission Apparatus Standards, removal of the references to Table O-12, which appeared in paragraphs (e)(1)(i) of §§1910.219 and 1926.307, and in paragraphs (o)(5)(ii) of §§1910.219 and 1926.307. These tables had been previously revoked by federal OSHA, and all remaining references to these tables are now being removed; (2) correction can be found in §1910.217 (c)(5), Mechanical Power Presses Standard which contained typographical errors that changed the meaning of the paragraph and implied that a Type-B gate is a presence-sensing device, which is not the case. Like federal OSHA, VOSH seeks to correct the error by adding a comma to separate a list of items; (3) corrections were made by removing and revising references to standards that were out-of-date, duplicative, unnecessary, or inconsistent throughout paragraph (f) of the Telecommunications Standard, §1910.268; and (4) a cross-reference in §1910.103(b)(2)(ii)(c), Hydrogen, to the nonexistent "Item" 14 was removed.

Mr. Cox explained that the adoption of these technical corrections would have no impact on employers or employees and the impact on the Department would be limited to implementing these changes through the Board adoption and subsequent APA regulatory adoption processes.

On behalf of the Department of Labor and Industry, Mr. Cox recommended that the Board adopt the technical corrections to the following standards: Mechanical Power-Transmission Apparatus, §§1910.219 and 1926.307; Mechanical Power Presses, §1910.217; Telecommunications, §1910.268; and Hydrogen, §1910.103, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of October 15, 2004.

Chairperson Jolly asked for a motion from the Board based on the Department's recommendation. Mr. Cernak made the motion that was seconded by Dr. Mundy. The motion was carried by voice vote.

Standard for Boiler and Pressure Vessel Operator Certification

Mr. Fred Barton, Director of Boiler and Pressure Vessel Compliance, requested, on behalf of the Department, that the Safety and Health Codes Board to consider for adoption a housekeeping amendment with a proposed effective date of October 15, 2004.

Mr. Barton informed the Board that the amendment updated the reference to the enabling statute for this regulation to reflect the 1997 re-codification and renumbering of the *Code of Virginia*, dealing with Counties, Cities, and Towns. Specifically, references to former §15.1-11.6 were corrected to §15.2-910 in 16 VAC 25-40-10, Definitions, and in subsection A of 16 VAC 25-40-20, Authority and application. He continued by stating that the adopting the amendments would have no impact on employers and employees and its impact on the Department would be limited to implementing the housekeeping change through the Board adoption and APA regulatory process. Additionally, he informed the Board that there are no technology feasibility issues, benefit/cost issues or any substantive changes whatsoever associated with the housekeeping amendment.

On behalf of the Department of Labor and Industry, Mr. Barton recommended that the Board adopt the housekeeping amendment to the Standard for Boiler and Pressure vessel Operator Certification, as

authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(a), with an effective date of October 15, 2004.

Chairperson Jolly asked for a motion from the Board to adopt the amendment. Dr. Mundy made the motion that was seconded by Mr. Burkhart. The motion was carried by voice vote.

Items of Interest from the Department of Labor and Industry

Mr. Crisanti mentioned that, since the spring meeting, he had only received responses from five Board members concerning the revisions of the Safety and Health Codes Board Bylaws suggested by staff. He informed the Board that he believed it would be beneficial to have greater Board input and would appreciate receiving additional responses for a consensus.

Items of Interest from the Board

Mr. Crisanti introduced the two new Board members: Ms. Milagro Rodriguez, Labor Representative knowledgeable in chemical and toxic substances, and Mr. Satish Korpe, Representative from construction industry employers.

Mr. Korpe commented on the lack of uniform enforcement of safety standards within the Commonwealth on the various government levels (especially on the local level), particularly with regard to highways and road construction. Mr. Cox responded that there should not be any differences on the various government levels and that the standards apply and should be adhered to on all levels.

Mr. Korpe stated that there is a lack of awareness of safety standards on the local levels. Mr. Cox informed Mr. Korpe that he'd like to know which areas were considered worst than others regarding enforcement. Mr. Korpe then suggested that people from different government levels should meet to discuss the uniform enforcement of standards. Mr. Cox stated that he would be willing to participate with representatives from city and county government to discuss uniform enforcement of standards.

Adjournment

There being no further business to come before the Board, the meeting adjourned at 10:55 a.m.